D R A F T

ATTACHMENT 1

CEQA FINDINGS

PREPARED FOR THE

POLICY FOR MAINTAINING INSTREAM FLOWS IN NORTHERN CALIFORNIA COASTAL STREAMS

OCTOBER 2013

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD
California Environmental Protection Agency

INTRODUCTION

The California Environmental Quality Act (CEQA) and the State CEQA Guidelines require that a public agency consider the environmental impacts of a project before a project is approved and make specific findings for identified significant environmental effects. (Pub. Resources Code, § 21081; Cal. Code Regs., tit. 14, § 15091.) This document includes written findings for each of the significant effects identified in the Substitute Environmental Document (SED) for the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy).

ENVIRONMENTAL EFFECTS OF THE PROJECT

The project is the adoption of the Policy. Adoption of the Policy would have no direct effects; all of the environmental effects are indirect effects that may result from actions taken by affected persons in response to the Policy. Adoption of the Policy can result in two types of indirect impacts to the environment: (1) impacts that may occur as a result of complying with the Policy, and (2) impacts that may occur as a result of attempting to avoid the requirements of the Policy. Some of the actions that affected persons may take to comply with the Policy are the same as actions that may be taken to avoid the Policy.

The actions that affected persons may take in order to comply with the Policy (as detailed in section 6.1.1 of the 2008 SED) include:

- Removing or modifying onstream storage and regulatory dams, and
- Constructing new and expanding existing offstream storage facilities.

The actions that affected persons may take in order to avoid complying with the Policy include:

- Removing or modifying onstream storage and regulatory dams,
- Increasing groundwater extraction and use,
- Increasing diversions under claim of riparian rights,
- Relying on other alternative water sources and water conservation, and
- Constructing new and expanding existing offstream storage facilities.

The Policy requires that instream flows be maintained. This requirement can restrict the amount of water potentially available for other beneficial uses, such as municipal, industrial, and agricultural uses. Potentially significant impacts of the indirect effects of the Policy on environmental resources are identified in section 6 of the 2008 SED as revised in 2013. In many cases, the significance of the impacts will depend on the timing, specific components, site-specific location, and other characteristics of the project-specific actions being proposed.

Many of the projects that might be undertaken by affected persons as a result of the Policy would be subject to a project-level CEQA review conducted by the State Water Board or by another lead agency, which would entail identification and mitigation of any significant environmental effects. In addition, other regulatory mechanisms can be expected to provide opportunities for minimizing and avoiding significant environmental effects. Regulatory requirements and mitigation measures are described in section 7 of the 2013 Revised SED and summarized in this document. These regulatory requirements and mitigation measures are likely to reduce many, but not all, of the potential indirect impacts of the Policy to less than significant levels. In some cases it may not be possible to mitigate the indirect impacts of the Policy to a less-than-significant level. In addition some actions may not require discretionary

approvals or an agency with regulatory authority may not take action. Finally, some impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the Policy, or what action they will take.

Potentially significant indirect environmental impacts resulting from adoption of the proposed Policy are summarized in the tables below. The associated CEQA findings follow each table. Pursuant to CEQA Guidelines section 15091, the State Water Board must make one or more of the following findings for each potentially significant impact identified in the SED:

> **(a)(1):** Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final SED.
> **(a)(2):** Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
> **(a)(3):** Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final SED.

1.1 INCREASED GROUNDWATER EXTRACTION

The Policy restrictions on surface water diversions could lead some existing or prospective diverters to pump groundwater instead of diverting surface water. The potentially significant impacts that might result from increases in groundwater extraction in lieu of existing or planned surface water diversions, including possible impacts identified in Appendix D and section 6.2 of the 2013 Revised SED, are summarized in Table 1.

Table 1. Potentially Significant Indirect Environmental Impacts Resulting from Increased Groundwater Extraction and Use by Water Diverters in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Aesthetics	Construction activities could result in short-term disturbance of visual resources. Siting of infrastructure could result in long-term disturbance of visual resources.
Agriculture Resources	Increases in groundwater extraction could result in lowering of the groundwater table and reduction in water available to non-irrigated crops that rely on groundwater for soil moisture resulting in reduced crop yield.
Air Quality	Construction activities could result in short-term contribution to PM10, ozone, nitrogen oxides, carbon monoxide or other pollutant levels. Operation of some pumps could result in long-term increased pollutant levels. Reliance on alternative methods of diversion or alternative water supplies could result in long term operation of pumps, which could result in increased greenhouse gas emissions (primarily carbon dioxide, methane, nitrous oxide, and ozone) that may contribute to global climate change.

Table 1. Potentially Significant Indirect Environmental Impacts Resulting from Increased Groundwater Extraction and Use by Water Diverters in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Biological Resources	Construction activities could result in disturbance of aquatic features (e.g., wetlands) regulated by the Army Corps of Engineers, Regional Water Quality Control Boards, California Department of Fish and Wildlife and California Coastal Commission; disturbance of special-status species and their habitats; disturbance of sensitive natural communities. Although unlikely, under certain circumstances switching to groundwater pumping could result in reduced surface water flows, which could harm riparian vegetation or degrade habitat for sensitive species, particularly if the reduction in surface water flows occurs during the summer.
Cultural Resources	Construction activities could result in disturbance of cultural resources. Siting of pumps and appurtenant infrastructure could impair the significance of historical resources.
Geology/Soils	Construction activities could result in erosion or loss of topsoil during and immediately following construction.
Hazards/Hazardous Materials	Increased groundwater extraction could result in increased use of hazardous materials associated with construction, operation, and maintenance of new or existing appurtenant facilities.
Hydrology/Water Quality	Construction activities could result in short-term increases in sedimentation and degradation of water quality. Although unlikely, under certain circumstances switching to groundwater pumping could result in reduced surface water flows, which could adversely affect water temperature and increase constituent concentrations due to reduced dilution, particularly if the reduction in surface water flows occurs during the summer. The production rates of nearby wells could drop.
Land Use/Planning	Construction activities and siting of infrastructure could result in conflicts with land use plans, policies or regulations adopted for the purpose of avoiding or mitigating environmental effects by agencies with jurisdiction within the project area.
Noise	Short-term increased noise from construction of new groundwater pumping facilities; long-term increased noise due to the operation of pumps.
Recreation	Although unlikely, under certain circumstances switching to groundwater pumping could result in reduced surface water flows, which could adversely affect recreational opportunities, particularly if the reduction in surface water flows occurs during the summer.
Transportation/Traffic	Construction activities could result in localized, short-term increases in traffic.
Utilities/Service Systems	Construction activities could result in localized, short-term disruption of utility service. Reliance on groundwater could result in expansion of existing water and energy delivery systems.

*Potentially significant impacts as listed in 2013 Revised SED Table 6-3 (February 22, 2013).

1.2 CEQA §15091 FINDINGS

15091(a)(1):
The State Water Board's authority under article X, section 2 of the California Constitution and Water Code section 100 has been incorporated into the Policy (see Policy sections 8.0, 8.2, and 8.4 and Appendix G). These provisions prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The constitutional doctrine of reasonable use applies to all users of both surface and groundwater, regardless of basis of water right, serving as a limitation on every water right and every method of diversion. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351, 367, 372.) In addition, the State Water Board's authority under the public trust doctrine has been incorporated into the Policy (see Policy sections 8.2 and 8.5 and Appendix G). The public trust doctrine protects navigation, fishing, recreation, environmental values, and fish and wildlife habitat. The State Water Board has an affirmative duty to protect public trust uses from the effects of water diversion and use if feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434-435.) The public trust doctrine applies to groundwater diversions to the extent those diversions harm public trust uses in navigable waters, or fish in any waters of the state. (See *id.* at pp. 435-437 [the public trust doctrine protects navigable waters from harm caused by diversion of nonnavigable tributaries]; *People v. Truckee Lumber Co.* (1897) 116 Cal. 397, 399 [A variant of the public trust applies to activities which harm the fishery in non-navigable waters.]) The exercise of these authorities could serve to avoid or substantially lessen the potentially significant environmental impacts of a switch to groundwater pumping on biological resources, hydrology/water quality, and recreation in cases where regulation to prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water is justified or action to ensure the protection of public trust resources is necessary. In addition, the State Water Board's authority to enforce against unauthorized diversion and use of water, including unauthorized diversion and use from subterranean streams, has been incorporated into the Policy (see Policy section 8.0 and Appendices G and H). The State Water Board does not have the resources, however, to investigate every possible instance of increased groundwater pumping and take regulatory action, if warranted, and therefore it is possible that some of the potentially significant impacts of increased groundwater pumping on biological resources, hydrology/water quality, and recreation will not be mitigated to less-than-significant levels.

15091(a)(2):
Potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, noise, recreation, transportation/traffic, and utilities/service systems *may* be mitigated in cases where a groundwater permit or approval is required and review of the potential environmental impacts of any increase in groundwater pumping is conducted.

The five counties in the Policy area have the authority to mitigate the potential impacts of increased groundwater pumping by regulating groundwater use pursuant to their police powers. Accordingly, counties can, and consistent with sound public policy should, regulate groundwater use to avoid the adverse impacts of increased groundwater extraction. But most of the counties are unlikely to do so. Currently, only one of the counties has developed a comprehensive program to regulate groundwater use (Napa), one county has a program to regulate groundwater use in a portion of the county (Mendocino), one county has implemented a non-regulatory groundwater management plan (Sonoma), and two counties have no plans, codes, or ordinances for regulating the use of percolating groundwater (Marin and Humboldt).

Accordingly, there will likely be little to no project-level CEQA review of the potential increase in the use of groundwater in the four counties with no regulatory framework for groundwater management.

15091(a)(3):
As discussed in section 7 of the 2013 Revised SED, adoption of the subterranean stream delineations prepared by Stetson Engineers is not a feasible mitigation measure for the potential increase in groundwater pumping attributable to the Policy taking into consideration all relevant factors including the following: (1) the speculative nature of the potential impact, (2) the fact that the potential switch from surface water diversions to groundwater pumping is unlikely to cause a significant reduction in surface water flows, (3) the fact that any localized impacts to groundwater resources are unlikely to be mitigated by adoption of the subterranean stream delineations, which cover only a small portion of the watersheds within the Policy area, (4) the extensive amount of time and high cost associated with a proceeding to consider adoption of the delineations, (5) the fact that even if the subterranean stream delineations are not adopted, the State Water Board can consider the delineation maps and supporting information on a case-by-case basis to assist in determining whether a particular groundwater well is subject to the State Water Board's permitting authority, and (6) the fact that the State Water Board has the legal authority to regulate any unacceptable impacts associated with the potential increase in groundwater pumping pursuant to the State Water Board's authority to prohibit the unreasonable use of water.

Although the State Water Board may exercise its regulatory authority on a case-by-case basis, in some cases it may not be possible to mitigate the impacts of any increase in groundwater pumping to a less-than-significant level. Some pumping may not require approval from the State Water Board or the county, and the State Water Board may not take regulatory action under the reasonable use doctrine or the public trust doctrine. In addition, some impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the Policy, or what action they will take. Under these circumstances, no additional mitigation measures exist and the only alternative that could conceivably avoid all of the potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, noise, recreation, transportation/traffic, and utilities/service systems is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy for purposes of water right administration pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic benefits of the Policy, as identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.

2.1 INCREASED RIPARIAN WATER USE

The proposed Policy's restrictions on surface water diversions could lead some affected persons to obtain water supplies from riparian diversions in addition to or in lieu of utilizing an appropriative water right subject to the Policy's limitations. The potentially significant impacts that might result from reliance on water diverted and used under a riparian water right, including

possible impacts identified in Appendix D and section 6.3 of the 2008 SED are summarized in Table 2.

Table 2. Potentially Significant Indirect Environmental Impacts Resulting from Increased Riparian Water Use by Water Diverters in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Air Quality	Operation of some pumps could result in long-term increased pollutant levels. Increased long term operation of pumps could result in increased greenhouse gas emissions (primarily carbon dioxide, methane, nitrous oxide, and ozone) that may contribute to global climate change.
Biological Resources	Diversion and use of water under a riparian water right could result in reduced surface water flows, particularly summer flows, which could harm riparian vegetation or degrade habitat for sensitive species.
Hydrology/Water Quality	Diversion and use of water under a riparian water right could result in reduced surface water flows, particularly summer flows, which could adversely affect water temperature and increase constituent concentrations due to reduced dilution.
Noise	Diversion and use of water under a riparian water right could result in long-term increased noise due to the operation of pumps.
Recreation	Diversion and use of water under a riparian water right could result in reduced surface water flows, particularly summer flows, which could adversely affect recreational opportunities.

*Potentially significant impacts as listed in the 2008 SED Table 6-5 (March 14, 2008).

2.2 §15091 CEQA Findings

15091(a)(1):
The State Water Board's authority under article X, section 2 of the California Constitution and Water Code section 100, has been incorporated into the Policy (see Policy sections 8.0, 8.2 and 8.4, and Appendix G). These provisions prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The constitutional doctrine of reasonable use applies to all users of both surface and groundwater, regardless of basis of water right, serving as a limitation on every water right and every method of diversion. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351, 367, 372.) In addition, the State Water Board's authority under the public trust doctrine has been incorporated into the Policy (see Policy sections 8.2 and 8.5 and Appendix G). The public trust doctrine protects navigation, fishing, recreation, environmental values, and fish and wildlife habitat. The State Water Board has an affirmative duty to protect public trust uses from the effects of water diversion and use if feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434-435.) As described in section 7.3 of the 2013 Revised SED, these authorities can be expected to avoid or substantially lessen the potentially significant environmental impacts of increased riparian water use on biological resources, hydrology/water quality, and recreation in cases where regulation to prohibit the

waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water is justified or action to ensure the protection of public trust resources is necessary. The State Water Board does not have the resources, however, to investigate every possible instance of increased riparian water use and take regulatory action, if warranted, and therefore it is possible that some of the potentially significant impacts of increased riparian water use on biological resources, hydrology/water quality, and recreation will not be mitigated to less-than-significant levels.

15091(a)(2):
Potentially significant impacts to air quality, biological resources, hydrology/water quality, noise, and recreation may be mitigated in cases where a public agency has regulatory authority over an activity and the agency reviews the potential environmental impacts of the activity. For example, if a riparian diversion is substantial or obstructs the natural flow of a stream, or if additional riparian diversion facilities are constructed, the diversion or construction activity should be undertaken in a manner that does not adversely affect fish and wildlife resources, per Fish and Game Code section 1602. If the California Department of Fish and Wildlife (CDFW) determines that the diversion or construction activity may substantially adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement would be prepared. The Agreement would include reasonable conditions necessary to protect those resources and must comply with the CEQA. Where CDFW or another public agency has regulatory authority over an activity involving increased riparian diversions, that agency can and should require changes in the activity to avoid or mitigate the potentially significant impacts.

15091(a)(3):
In some cases it may not be possible to mitigate the impacts from an increase in riparian diversions to a less-than-significant level. In addition, some actions may not require discretionary approvals or an agency with regulatory authority may not take action. Finally, some impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the Policy, or what action they will take. Under these circumstances, no additional mitigation measures exist and the only project alternative that could conceivably avoid all of the potentially significant impacts to air quality, biological resources, hydrology/water quality, noise, and recreation is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy for purposes of water right administration pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic benefits of the Policy, as identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.

3.1 INCREASED RELIANCE ON OTHER ALTERNATIVE SOURCES

The proposed Policy's restrictions on surface water diversions could lead some water right applicants to obtain water supplies from sources other than appropriative surface water rights (i.e., "alternative water sources"). Section 6.4 and Appendix D of the 2008 SED identify the potentially significant environmental impacts that could result from reliance on alternative sources of water including imported water, desalinated water, and recycled water, and from reliance on water conservation. These potential impacts are summarized in Table 3.

Table 3. Potentially Significant Indirect Environmental Impacts Resulting from Increased Reliance on Other Alternative Sources by Water Diverters in Response to the Policy†

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Aesthetics	Construction activities could result in short-term disturbance of visual resources. Siting of infrastructure could result in long-term change in visual character or quality.
Agriculture Resources	Implementation of water conservation could result in modifications to cropping patterns and conversion of farmland to less water-consumptive use.
Air Quality	Construction activities could result in short-term contribution to PM10, ozone, nitrogen oxides, carbon monoxide or other pollutant levels. Reliance on alternative sources of water could result in long term operation of pumps, which could result in increased greenhouse gas emissions (primarily carbon dioxide, methane, nitrous oxide, and ozone) that may contribute to global climate change.
Biological Resources	Construction, operation, and maintenance of infrastructure could result in disturbance of aquatic features (e.g., wetlands) regulated by the Army Corps of Engineers, Regional Water Quality Control Boards, California Department of Fish and Wildlife and California Coastal Commission; could disturb special-status species and their habitats; and could disturb sensitive natural communities.
Cultural Resources	Construction activities could disturb cultural resources. Siting of infrastructure could impair the significance of historical resources.
Geology/Soils	Erosion or loss of topsoil during and immediately following construction activities could occur; infrastructure could result in exposure of people or structures to potential fault rupture, seismic ground shaking, landslide, or other geologic hazard.
Hazards/Hazardous Materials	Construction, operation, and maintenance of infrastructure could result in increased use of hazardous materials.
Hydrology/Water Quality	Construction, operation, and maintenance activities could result in increases in sedimentation and degradation of water quality; use of desalinated and recycled water and increased water conservation could contribute to salt loadings in the Policy Area.
Land Use/Planning	Implementation of water conservation could reduce projections of future development of lands for urban or agricultural uses.
Noise	Construction, operation, and maintenance activities could result in increases in noise.
Public Services	Construction, operation, and maintenance of new or altered facilities needed to provide acceptable levels of public services (i.e., desalination, wastewater treatment, conveyance facilities) could cause significant environmental impacts.
Transportation/Traffic	Construction activities could result in localized, short-term increases in traffic.

Table 3. Potentially Significant Indirect Environmental Impacts Resulting from Increased Reliance on Other Alternative Sources by Water Diverters in Response to the Policy†

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Utilities/Service Systems	Use of imported water, desalinated water, and recycled water as alternative water supply sources, and of reductions in demand through conservation, could require construction or expansion of infrastructure; construction activities could result in localized, short-term disruption of utility service and significant environmental effects.

† The impact to Population/Housing was not included in this table because, judging from the description of the impact, identification of the impact as potentially significant appears to have been a mistake in the 2008 SED.

*Potentially significant impacts as listed in the 2008 SED Table 6-7 (March 14, 2008).

3.2 §15091 CEQA Findings

15091(a)(1):

Any increased reliance on recycled water as an alternative source of supply that involves a change in point of discharge, place of use, or purpose of use of treated wastewater will require State Water Board review and approval of a wastewater change petition pursuant to Water Code section 1211, unless the changes will not result in decreased flow in any portion of a watercourse. Before approving a wastewater change petition, the State Water Board must find that the changes will not injure other legal users of water, will not unreasonably affect fish and wildlife, and will be in the public interest. (See Wat. Code, §§ 1211, subd. (a), 1701.3, subd. (b), 1253, & 1255.) Unless an exemption applies, the State Water Board's review of petitions is subject to CEQA. Provisions for evaluating and determining whether the changes proposed in a wastewater change petition will affect instream flows have been incorporated into Policy section 3.3.2.2. In addition, the State Water Board's authority to incorporate terms and conditions in water rights and orders to ensure that the specific projects are carried out in ways that avoid or minimize potentially significant environmental effects have been incorporated into the Policy (see Policy Appendix F, section F.1.0). Accordingly, the State Water Board will have the opportunity to identify and mitigate any impacts associated with any increased reliance on recycled water as an alternative source of supply, including the applicable impacts as summarized in Table 3 (above), to the extent that State Water Board review and approval of individual wastewater change petitions is required.

15091(a)(2):

Potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, noise, public services, transportation/traffic, and utilities/service systems may be mitigated in cases where a public agency carries out the activity or has regulatory authority over the activity and evaluates the environmental impacts of the activity. Reliance on alternative sources of water and the potential construction, operation, and maintenance of associated infrastructure may be carried out by or require permits and/or approval from the following public agencies:

- Local municipalities and county governments,
- Local public water agencies and special districts with discretionary approval authority,
- California Department of Fish and Wildlife,
- California Regional Water Quality Control Board—North Coast and San Francisco Bay Regions,
- California Department of Parks and Recreation, and
- California Coastal Commission.

To the extent that an agency has regulatory authority over an activity involving the reliance on alternative sources of water, that agency can and should require changes in the activity to avoid or mitigate the potentially significant impacts.

15091(a)(3):
In some cases it may not be possible to mitigate the impacts of any increased reliance on alternative water sources to a less-than-significant level. In addition, some actions may not be carried out by a public agency or require discretionary approvals, or an agency with regulatory authority may not take action. Finally, some impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the Policy, or what action they will take. Under these circumstances, no additional mitigation measures exist and the only alternative that could conceivably avoid all of the potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, noise, public services, transportation/traffic, and utilities/service systems is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy for purposes of water right administration pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic the benefits of the Policy, as identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.

4.1 MODIFICATION OF ONSTREAM DAMS

The Policy could cause water right applicants, registrants, and petitioners to modify existing onstream dams. These construction activities may result in temporary or permanent environmental impacts. The potentially significant impacts that might result from modification of onstream dams in response to the Policy, including possible impacts identified in Appendix E and section 6.5 of the 2008 SED, are summarized in Table 4.

Table 4. Potentially Significant Indirect Environmental Impacts Resulting from Modification of Onstream Dams by Diverters in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Aesthetics	Construction activities could result in short-term disturbances of visual resources
Agriculture Resources	Modification of some dams could result in reductions of reservoir storage capacity available for agricultural use, and could result in conversion of farmland to non-agricultural use.

Table 4. Potentially Significant Indirect Environmental Impacts Resulting from Modification of Onstream Dams by Diverters in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Air Quality	Construction activities could result in short-term contribution to PM10, ozone, nitrogen oxides, carbon monoxide or other pollutant levels. Increased operation of pumps could result in increased greenhouse gas emissions (primarily carbon dioxide, methane, nitrous oxide, and ozone) that may contribute to global climate change.
Biological Resources	Construction activities could result in disturbance of aquatic features (e.g., wetlands) regulated by the Army Corps of Engineers, Regional Water Quality Control Boards, Department of Fish and Game and California Coastal Commission; disturbance of special-status species and their habitats; disturbance of sensitive natural communities.
Cultural Resources	Construction activities could result in disturbance of cultural resources.
Geology/Soils	Modification of dams could result in exposure of people or structures to potential fault rupture, seismic ground shaking, landslide, or other geologic hazard; and erosion or loss of topsoil during and immediately following construction.
Hydrology/Water Quality	Construction activities could result in short-term increases in sedimentation and degradation of water quality.
Utilities/ Service Systems	Construction activities could result in localized, short-term disruption of utility service. Modification of some dams could result in reductions of reservoir storage capacity available for domestic, industrial, and municipal use and for stormwater attenuation, and could result in expansion of existing facilities or construction of new facilities.

*Potentially significant impacts as listed in the 2008 SED Table 6-9 (March 14, 2008).

4.2 §15091 CEQA Findings

15091(a)(1):

Affected persons who modify onstream dams in order to comply with the Policy will require a new water right or modification of an existing water right. The State Water Board's authority to incorporate terms and conditions in water rights to ensure that the specific projects are carried out in ways that avoid or minimize potentially significant environmental effects have been incorporated into the Policy (see Appendix F, section F.1.0). In addition, unless an exemption applies, the State Water Board's review of water right applications and petitions is subject to CEQA. California Code of Regulations, title 23, section 780 requires all water right permits issued by the State Water Board to contain applicable standard permit terms and conditions. Additionally, for all water right actions, the State Water Board must consider the effect of the project on public trust resources and where feasible, avoid of minimize harm to those resources. Therefore, if all or a portion of a project is found to be exempt from CEQA, an analysis will still be needed to evaluate the project's effects on public trust resources and the beneficial uses of water. The State Water Board also has authority to condition appropriative water rights in the

public interest. (Wat. Code, § 1253.) Accordingly, the State Water Board will have the opportunity to identify and mitigate the impacts of modification of onstream dams as part of the State Water Board's review of individual water right applications and petitions, including the impacts as summarized in Table 4 (above). Similarly, the State Water Board will have the opportunity to ensure that applicants comply with any other applicable regulatory requirements. For example, any project that requires a federal permit and that may result in a discharge to waters of the United States, a Clean Water Act (CWA) Section 401 Water Quality Certification that the proposed project will comply with CWA Sections 301, 302, 303, 306 and 307, the applicable Basin Plan, and other appropriate provisions of State law, must be obtained from the State Water Board and may be conditioned or denied as necessary to ensure compliance.

The State Water Board's authority can be expected to avoid or substantially lessen potentially significant environmental impacts in cases where applicable permit terms and conditions are incorporated. However, in some cases, it may not be feasible to mitigate the indirect impacts of onstream dam modification to a less-than-significant level. For example, it may not be possible to mitigate significant impacts related to the loss of wetland habitat. As identified in the 2013 Revised SED, the following is a list of **example permit terms** that may be included in water rights issued or petitions approved under the Policy to reduce potential impacts to the noted environmental resource areas and ensure that applicants comply with any other applicable regulatory requirements. This list is included for illustrative purposes and is not intended to include all possible permit terms. A list of standard terms is maintained on the State Water Board's website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/permits/. In addition new terms may be developed during project level environmental reviews.

1. *No water shall be diverted under this permit, and no construction related to such diversion shall commence, until permittee obtains all necessary permits or other approvals required by other agencies. If an amended permit is issued, no new facilities shall be utilized, nor shall the amount of water diverted increase beyond the maximum amount diverted during the previously authorized time period, until permittee complies with the requirements of this term.*

   Within 90 days of the issuance of this permit or any subsequent amendment, permittee shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, permittee shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002.); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344.); or, (5) local grading permits.

   Permittee shall, within 30 days of issuance of all permits, approvals or waivers, transmit copies to the Division of Water Rights.

2. *No water shall be diverted under this right unless right holder is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how right holder will comply with the terms and conditions of this right. Right holder shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan.*

For potentially significant impacts to air quality:

3. *Prior to the start of construction, Permittee shall submit a detailed Emission Control and Mitigation Plan to the Deputy Director for Water Rights. Permittee shall also submit a copy of the plan to the Air Quality Management District. The Emission Control and Mitigation Plan shall be consistent with the Air Quality Management District's Air Quality Guidelines and include a monitoring and reporting component to ensure that mitigation measures identified in the Emission Control and Mitigation Plan are implemented. Permittee shall provide evidence to verify implementation of measures identified in the Emission Control and Mitigation Plan within 30 days of completion of construction work to the Deputy Director for Water Rights. Permittee shall also provide a copy of the evidence to the Air Quality Management District upon request. Evidence may consist of, but is not limited to, photographs and construction records.*

For potentially significant impacts to biological resources:

4. *No water shall be diverted under this right, and no construction related to such diversion shall commence, unless right holder complies with the requirements of the Clean Water Act. In order to demonstrate such compliance, right holder shall obtain a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers, or evidence that such a permit is not required, and provide such permit or evidence to the Division of Water Rights. If it is determined that a Clean Water Act section 404 permit is required, right holder shall further demonstrate compliance by obtaining a Clean Water Act section 401 certification from the State Water Board.*

5. *No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the Department of Fish and Wildlife and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a letter signed by the Department of Fish and Wildlife indicating that an agreement is not necessary.*

   Also see **example terms 1** and **2** above.

For potentially significant impacts to hydrology/water quality:

6. *In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, San Francisco Bay/North Coast Region, or by the State Water Resources Control Board.*

7. *No water shall be used under this permit until permittee has filed a report of waste discharge with the California Regional Water Quality Control Board, San Francisco Bay/North Coast Region, pursuant to Water Code Section 13260, and the Regional Board or State Water Resources Control Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Water Board or State Water Board are being met.*

8. *No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.*

   Also see **example terms 1** and **2** above.

15091(a)(2):
Potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, hydrology/water quality, noise, and recreation may be mitigated in cases where a public agency exercises regulatory authority over dam modification activities (also see SED section 7.1). To the extent that an agency has regulatory authority over an activity involving dam modification, that agency can and should require changes in the activity to avoid or mitigate the potentially significant impacts. The following is a list of regulatory requirements that may apply to actions involving modification of an onstream reservoir:

1. A land use permit may be required if the project is not consistent with the relevant zoning and/or land use ordinances as prepared in the general plans for any such county or city;

2. A report of waste discharge must be filed with the appropriate Regional Water Quality Control Board and a waste discharge requirement must be obtained (Wat. Code, § 13260) if the modification involves a discharge to waters of the State;

3. A Stormwater Pollution and Prevention Plan (SWPPP) must be prepared under the State Water Board's General Permit for Discharges of Storm Water Associated with Construction Activity for any construction involving disturbance of 1 acre or more;

4. The San Francisco Bay Area Air Quality Management District, Northern Sonoma County Air Pollution Control District, Mendocino County Air Quality Management District, and North Coast Unified Air Quality Management District have developed rules containing guidelines for assessing the air quality impacts of proposed projects as well as prohibitions and control measures which in most cases would mitigate construction related emissions to less than significant levels;

5. A permit is required from the United States Army Corps of Engineers (USACE) if the project will involve disturbance of a wetland and the USACE determines that the wetland is subject to regulation under Section 404 of the CWA;

6. A Lake or Streambed Alteration Agreement is required if an activity will substantially divert or obstruct the natural flow of a stream, substantially change or use any material from the bed or bank of a stream, or deposit any material containing pavement in the stream, and CDFW determines that the activity may substantially adversely affect fish and wildlife resources. The Agreement would include reasonable conditions necessary to protect those resources and must comply with the CEQA; and/or

7. CDFW, in its discretion, may also require dam modification consistent with the Policy principles when conditioning registrations.

15091(a)(3):
In some cases it may not be possible to mitigate the impacts of modification of onstream dams to a less-than-significant level; for example, it may not be possible to mitigate for the loss of wetland habitat a reservoir provided. Under these circumstances, no additional mitigation measures exist and the only alternative that could conceivably avoid all of the potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hydrology/water quality, and utilities/service systems is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy for purposes of water right administration pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic benefits of the Policy, as identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.

5.1 REMOVAL OF ONSTREAM DAMS

To comply with the Policy, affected persons may remove onstream dams, which may result in some adverse environmental impacts. This section includes findings for dam removal activities that do not require a water right approval. For findings associated with impacts due to dam removal activities that may require a water right approval because they also involve modification of onstream dams or relocation of onstream storage see sections 4.2 and 6.2, respectively. The potentially significant impacts that might result from removal of onstream dams by diverters in response to the Policy, including possible impacts identified in Appendix E and section 6.5 of the 2008 SED are summarized in Table 5.

Table 5. Potentially Significant Indirect Environmental Impacts Resulting from Removal of Onstream Dams by Diverters in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Aesthetics	Construction activities could result in short-term disturbances to visual resources; relocation or elimination of onstream storage could result in long-term change in visual character or quality.
Agriculture Resources	Relocation or elimination of onstream storage could result in reductions in reservoir storage capacity available for agricultural use, and could result in conversion of farmland to non-agricultural use.

Table 5. Potentially Significant Indirect Environmental Impacts Resulting from Removal of Onstream Dams by Diverters in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Air Quality	Construction activities could result in short-term contribution to PM10, ozone, nitrogen oxides, carbon monoxide or other pollutant levels. The proposed policy allows relatively more water for diversion in larger watersheds than in smaller watersheds. Adoption of the proposed policy may cause diverters to seek downstream points of diversion to pump water to upstream places of use, or to use alternative water sources. Increased long term operation of pumps could result in increased greenhouse gas emissions (primarily carbon dioxide, methane, nitrous oxide, and ozone) that may contribute to global climate change.
Biological Resources	Relocation or elimination of onstream storage could result in disturbance of aquatic features (e.g., wetlands) regulated by the Army Corps of Engineers, Regional Water Quality Control Boards, Department of Fish and Game and California Coastal Commission; could disturb special-status species and their habitats; and could disturb sensitive natural communities.
Cultural Resources	Construction activities could disturb cultural resources.
Geology/Soils	Erosion or loss of topsoil during and immediately following construction activities could occur.
Hazards/Hazardous Materials	Construction activities could result in increased use of hazardous materials.
Hydrology/Water Quality	Construction activities could result in short-term increases in sedimentation and degradation of water quality; changes in channel processes and release of sediment following dam removal; and reduction in detention of storm flows and increased potential flooding.
Land Use/Planning	Construction activities and relocation or elimination of onstream storage could conflict with land use plans, policies or regulations adopted for the purpose of avoiding or mitigating environmental effects by agencies with jurisdiction within the project area.
Noise	Construction activities could result in short-term increases in noise.
Recreation	Relocation or elimination of onstream storage could result in a loss of recreational opportunities.
Utilities/Service Systems	Construction activities could result in localized, short-term disruption of utility service. Relocation or elimination of onstream storage could result in reductions in reservoir storage capacity available for domestic, industrial, and municipal use and for stormwater attenuation, and could result in expansion of existing facilities or construction of new facilities.

*Potentially significant impacts as listed in the 2008 SED Table 6-10 (March 14, 2008).

5.2 §15091 CEQA Findings

15091(a)(2):
Activities associated with removal of onstream dams, such as construction in the stream channel, would be within the responsibility and jurisdiction of another public agency. Potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, noise, recreation, and utilities/service systems could be mitigated through CEQA review or other regulatory mechanisms. Accordingly, removal of onstream dams may require the same regulatory permits identified in section **4.2 (Modification of Onstream Dams)** *15091(a)(2)*. To the extent that an agency has regulatory authority over an activity involving removal of onstream dams, that agency can and should require changes in the activity to avoid or mitigate the potentially significant impacts. However, in some cases, it may not be feasible to mitigate the indirect impacts of onstream dam removal to a less-than-significant level. For example, it may not be possible to mitigate significant impacts related to the loss of wetland habitat.

15091(a)(3):
In some cases it may not be possible to mitigate the impacts of removal of onstream dams to a less-than-significant level; for example, it may not be possible to mitigate for the loss of wetland habitat a onstream dam provided. In addition, some actions may not require discretionary approvals or an agency with regulatory authority may not take action. Finally, some impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the Policy, or what action they will take. Under these circumstances, no additional mitigation measures exist and the only alternative that could conceivably avoid all of the potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality recreation, land use/planning, noise, recreation, and utilities/service systems is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic benefits of the Policy, as identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.

6.1 RELOCATION OF ONSTREAM STORAGE

Due to Policy requirements limiting construction of new onstream dams, future applicants for water rights who need storage may choose to construct new offstream storage. Also, owners of existing unauthorized onstream dams may have to remove their dams and may choose to construct new offstream storage to replace the removed onstream storage. These actions could give rise to indirect environmental impacts. The potentially significant impacts that might result from relocation of onstream dams by diverters in response to the Policy, including possible impacts identified in Appendix E and section 6.6 of the 2008 SED, are summarized in Table 6.

Table 6. CEQA Findings of Fact for Potentially Significant Indirect Environmental Impacts Resulting from Diverters' Relocation of Onstream Storage Capacity to Offstream Locations in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Aesthetics	Construction activities could result in short-term disturbances to visual resources; relocation to offstream storage could result in long-term change in visual character or quality.
Agriculture Resources	Relocation of storage could result in reductions in reservoir storage capacity available for agricultural use, and could result in conversion of farmland to non-agricultural use due to the reduction of storage or inundation of agricultural land.
Air Quality	Construction activities could result in short-term contribution to PM10, ozone, nitrogen oxides, carbon monoxide or other pollutant levels. The proposed policy allows relatively more water to be diverted in larger watersheds than in smaller watersheds. Adoption of the draft policy may cause diverters to seek downstream points of diversion to pump water to upstream places of use. Increased long term operation of pumps could result in increased greenhouse gas emissions (primarily carbon dioxide, methane, nitrous oxide, and ozone) that may contribute to global climate change.
Biological Resources	Relocation of storage could result in disturbance of aquatic features (e.g., wetlands) regulated by the Army Corps of Engineers, Regional Water Quality Control Boards, Department of Fish and Game and California Coastal Commission; could disturb special-status species and their habitats; and could disturb sensitive natural communities.
Cultural Resources	Construction activities could disturb cultural resources. Relocation of onstream storage could impair the significance of historical resources.
Geology/Soils	Erosion or loss of topsoil during and immediately following construction activities could occur. Relocation of onstream storage could result in exposure of people or structures to potential fault rupture, seismic ground shaking, landslide, or other geologic hazard.
Hazards/Hazardous Materials	Construction activities could result in increased use of hazardous materials.
Hydrology/Water Quality	Construction activities could result in short-term increases in sedimentation and degradation of water quality. Relocation of onstream storage could result in reduced detention of storm flows and increased potential flooding.
Land Use/Planning	Construction activities and relocation of onstream storage could conflict with land use plans, policies or regulations adopted for the purpose of avoiding or mitigating environmental effects by agencies with jurisdiction within the project area.
Mineral Resources	Construction activities and relocation of onstream storage could result in the loss of availability of a mineral resource that could be of value to the region and the residents of the State and could result in the loss of locally-important mineral resources recovery sites that may be delineated on a local general plan, specific plan, or other land use plan.
Noise	Construction activities could result in short-term increases in noise.
Public Services	Relocation of onstream storage could result in reductions in reservoir storage capacity available for fire protection.

Table 6. CEQA Findings of Fact for Potentially Significant Indirect Environmental Impacts Resulting from Diverters' Relocation of Onstream Storage Capacity to Offstream Locations in Response to the Policy

ENVIRONMENTAL ISSUE AREA	POSSIBLE INDIRECT ENVIRONMENTAL IMPACT*
Recreation	Relocation of onstream storage could result in a loss of recreational opportunities.
Transportation/Traffic	Construction activities could result in localized, short-term increases in traffic.
Utilities/Service Systems	Construction activities could result in localized, short-term disruption of utility service. Relocation of onstream storage could result in reductions in reservoir storage capacity available for domestic, industrial, and municipal use and for stormwater attenuation, and could result in expansion of existing facilities or construction of new facilities.

*Potentially significant impacts as listed in the 2008 SED Table 6-11 (March 14, 2008).

6.2 §15091 CEQA FINDINGS

15091(a)(1):
Affected persons that construct new offstream facilities for storage of streamflows will require a new water right or modification of an existing water right. The State Water Board's authority to incorporate terms and conditions in water rights to ensure that the specific projects are carried out in ways that avoid or minimize potentially significant environmental effects have been incorporated into the Policy (see Policy Appendix F, section F.1.0). In addition, unless an exemption applies, the State Water Board's review of water right applications and petitions is subject to CEQA. For all water right actions, the State Water Board must consider the effect of the project on public trust resources and where feasible, avoid or minimize harm to those resources. Therefore, if all or a portion of a project is found to be exempt from CEQA, an analysis will still be needed to evaluate the project's effects on public trust resources and the beneficial uses of water. The State Water Board's authorities under article X, section 2 of the California Constitution and Water Code section 100, and the State Water Board's affirmative duties to protect public trust uses have been incorporated into the Policy (see Policy sections 8.4 and 8.5). The State Water Board also has authority to condition appropriative water rights in the public interest. (Wat. Code, § 1253.) Accordingly, the State Water Board will have the opportunity to identify and mitigate the impacts of construction of offstream storage reservoirs as part of the State Water Board's review of individual water right applications and petitions, including the impacts as summarized in Table 6 (above).

Similarly, the State Water Board will have the opportunity to ensure that applicants comply with any other applicable regulatory requirements. For example, any project that requires a federal permit and that may result in a discharge to waters of the United States, a Clean Water Act (CWA) Section 401 Water Quality Certification that the proposed project will comply with CWA Sections 301, 302, 303, 306 and 307, the applicable Basin Plan, and other appropriate provisions of State law, must be obtained from the State Water Board and may be conditioned or denied as necessary to ensure compliance. In most cases, these authorities can be expected to avoid or substantially lessen the potentially significant environmental impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral

resources, noise, public services, recreation, transportation/traffic, and utilities/service systems. However, in some cases, it may not be feasible to mitigate the indirect impacts of onstream dam relocation to a less-than-significant level. For example, it may not be possible to mitigate significant impacts related to the loss of wetland habitat. For most impacts inclusion of the **example permit terms** listed above in section 4.2 in water rights issued or modified under the Policy will reduce potential impacts to the noted environmental resource areas and will ensure that applicants comply with any other applicable regulatory requirements.

For potentially significant impacts to air quality:

See **example permit terms 1, 2,** and **3** under section **4.2 (Modification of Onstream Dams)** *15091(a)(1).*

For potentially significant impacts to biological resources:

See **example permit terms 1, 2, 4,** and **5** under section **4.2 (Modification of Onstream Dams)** *15091(a)(1).*

For potentially significant impacts to hydrology/water quality:

See **example terms 1, 2, 6**, **7,** and **8** under section **4.2 (Modification of Onstream Dams)** *15091(a)(1).*

15091(a)(2):

Potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, public services, recreation, transportation/traffic, and utilities/service systems may be mitigated in cases where a public agency with regulatory authority exercises that authority over offstream storage facility construction (also see SED section 7.1). See **section 4.2 (Modification of Onstream Dams)** *15091(a)(2)* for other possible requirements for construction of offstream dams. To the extent that an agency has regulatory authority over an activity involving the relocation of onstream dams, that agency can and should require changes in the activity to avoid or mitigate the potentially significant impacts.

15091(a)(3):

In some cases it may not be possible to mitigate the impacts from relocation of onstream dams to a less-than-significant level; for example, it may not be possible to mitigate for the loss of wetland habitat the reservoir provided. Under these circumstances, no additional mitigation measures exist and the only alternative that could conceivably avoid all of the potentially significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, noise, public services, recreation, transportation/traffic, and utilities/service systems is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic benefits of the Policy, as identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.

7.1 LIMITS ON DIVERSION IN ACCORDANCE WITH FLOW-RELATED POLICY CRITERIA

Limits on diversion will be beneficial to aquatic life, but, in some situations, implementation of these criteria will limit or reduce the amount of water available for existing and future diversions. Limits on the amounts of water available for diversion may have potentially significant impacts on agricultural resources if the available water does not meet crop water demands. Similarly, limits on the amount of water available for diversion could result in potentially significant impacts on domestic and municipal water supply to the extent that available water is insufficient to meet existing or future demand. These potential impacts are identified in section 6.7 of the 2008 SED.

7.2 §15091 CEQA Findings

15091(a)(1):
Changes have been incorporated in the Policy which avoid or substantially lessen the potential impacts to water supply. Alternatives to the proposed Policy criteria that allow more diversion to occur have a lower chance of causing significant changes to offstream environmental resources than alternatives that allow less diversion. The relative degree to which one alternative may constrain diversion of water versus another was inferred by comparing the volumes of water potentially available for diversion under each alternative (see summary of the water cost analysis in **section 6.8** of the 2008 SED). The results showed that the alternative included in the Policy allows the greatest amount of diversion compared to other combinations of criteria that were determined to be regionally protective. Based on the comparison, the relative degree to which the Policy may lead affected persons to take actions that could result in indirect environmental effects would be expected to be the least for the proposed Policy.

15091(a)(2):
Potentially significant impacts to agricultural resources and domestic and municipal water supply may be mitigated in cases where the water purveyor is a public agency and the agency can implement water conservation measures. To the extent that they can, public agencies should minimize or avoid any water supply impacts by implementing water conservation measures.

15091(a)(3):
Based on the water cost analysis in section 6.8 of the 2008 SED, the relative degree to which the Policy may lead affected persons to take actions that could result in indirect environmental effects would be expected to be the least for the proposed Policy. Nonetheless, in some cases it may not be possible to avoid the potential impacts to agricultural resources and domestic and municipal water supply or mitigate the impacts to a less-than-significant level. To the extent that the Policy does not serve to avoid significant impacts to water supplies, and other public agencies cannot mitigate the impacts by implementing conservation measures, no additional mitigation measures exist and the only alternative that could conceivably avoid the potentially significant impacts to agricultural resources and domestic and municipal water supply is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy for purposes of water right administration pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic benefits of the Policy, as

identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.

8.1 CUMULATIVE IMPACTS

The environmental impacts of actions taken by affected persons that are individually limited may be cumulatively considerable when viewed in conjunction with the effects of foreseeable past, current, and probable future projects in the Policy Area. The State Water Board considered foreseeable past, current, and probable projects to include two categories of land use and water development projects in the Policy Area that may have impacts that are similar to the proposed Policy: (1) projects requiring water supplies (e.g., conversion of natural lands to agricultural use); and (2) projects developing water supplies under other bases of right (e.g., expanded groundwater pumping for domestic and municipal use). The proposed Policy, in combination with these land use and water development projects, may have cumulative impacts on the environment that are similar to the Policy-related impacts discussed in the preceding sections above.

8.2 §15091 CEQA Findings

15091(a)(1):
The State Water Board's authority under article X, section 2 of the California Constitution and Water Code section 100 has been incorporated into the Policy (see Policy sections 8.2 and 8.4 and Appendix G). These provisions prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The constitutional doctrine of reasonable use applies to all users of both surface and groundwater, regardless of basis of water right, serving as a limitation on every water right and every method of diversion. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351, 367, 372.) In addition, the State Water Board's authority under the public trust doctrine has been incorporated into the Policy (see Policy sections 8.2 and 8.5 and Appendix G). The public trust doctrine protects navigation, fishing, recreation, environmental values, and fish and wildlife habitat. The State Water Board has an affirmative duty to protect public trust uses from the effects of water diversion and use if feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434-435.) The exercise of authorities could serve to avoid or substantially lessen the potentially significant cumulative impacts attributable to any increased groundwater pumping or riparian water use in cases where regulation to prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water is justified or action to ensure the protection of public trust resources is necessary.

The State Water Board's authority to incorporate terms and conditions in water rights to ensure that the specific projects are carried out in ways that avoid or minimize potentially significant environmental effects has been incorporated into the Policy (see Policy Appendix F, section F.1.0). California Code of Regulations, title 23, section 780 requires all water right permits issued by the State Water Board to contain applicable standard permit terms and conditions. In addition, unless an exemption applies, the State Water Board's review of water right applications and petitions is subject to CEQA. Accordingly, the State Water Board will have the opportunity to identify and mitigate the potential cumulative impacts of modification of onstream dams and construction of offstream storage as part of the State Water Board's review of individual water right applications and petitions. Similarly, the State Water Board will have the

opportunity to ensure that applicants and petitioners comply with any other applicable regulatory requirements. This authority can be expected to avoid or substantially lessen some of the potentially significant cumulative impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hydrology/water quality, and utilities/service systems. However, in some cases, it may not be feasible to mitigate the indirect impacts to a less-than-significant level. For example, it may not be possible to mitigate significant impacts related to the loss of wetland habitat. For projects that require water right permits inclusion of the **example permit terms**, identified in section **4.2 (Modification of Onstream Dams)** *15091(a)(1)* above, in permits issued under the Policy will, in most cases, reduce potential impacts to environmental resource areas (as noted) and ensure that applicants comply with any other applicable regulatory requirements.

15091(a)(2):
Potentially significant cumulative impacts may be mitigated in cases where a public agency carries out a project or has regulatory authority over the activity and evaluates the environmental impacts of the activity. Permitting requirements and regulatory authorities that may be applicable to the various actions that affected persons may take as a result of Policy adoption are listed in sections **1.2 (Increased Groundwater Extraction)** *15091(a)(2),* **2.2 (Increased Riparian Water Use)** *15091(a)(2)*, **3.2 (Increased Reliance on Other Alternative Sources)** *15091(a)(2)*, **4.2 (Modification of Onstream Dams)** *15091(a)(2)*, **5.2 (Removal of Onstream Dams)** *15091(a)(2)*, and **6.2 (Relocation of Onstream Storage)** *15091(a)(2),* above. To the extent that agencies identified in the above listed sections have the authority to mitigate for the potential cumulative impacts, those agencies can and should exercise their authority to ensure that the impacts are mitigated to a less than significant level. In addition, local governments that have regulatory authority over the types of land use and water development projects that contribute to cumulative impacts can and should mitigate for those impacts.

15091(a)(3):
In some cases it may not be possible to mitigate the potential cumulative impacts of the Policy to a less-than-significant level, such as the loss of wetland habitat a reservoir provided. In addition, some actions may not require discretionary approvals or an agency with regulatory authority may not take action. For example, as discussed in section 7.2.2 of the 2013 Revised SED, the five counties in the Policy area have the authority to mitigate the potential impacts of increased groundwater pumping by regulating groundwater use pursuant to their police powers, but most of the counties are unlikely to do so. In addition, the State Water Board does not have permitting authority over percolating groundwater. Accordingly, there will likely be little to no project-level CEQA review of the potential increase in the use of percolating groundwater in four out of the five counties, which have no regulatory framework for groundwater management. Finally, some impacts may not be identified or mitigated because it is impossible to predict who will take action in response to the Policy, or what action they will take. In these cases, no additional mitigation measures exist and the only alternative that could conceivably avoid all of the potentially significant cumulative impacts is the no project alternative. The no project alternative is not legally feasible, however, because the State Water Board is required to adopt an instream flow policy for purposes of water right administration pursuant to Water Code section 1259.4. The no project alternative is also not feasible taking into consideration the environmental and economic benefits of the Policy, as identified in the Statement of Overriding Considerations, that would not be achieved if the Policy were not adopted.